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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

DEMETRIS COLEMAN,

Defendant and Appellant.

A134124

**(Contra Costa County
Super. Ct. No. 05-110237-5)**

This case returns to us following a grant of review and transfer by the California Supreme Court. Our high court directed us to vacate our prior opinion and to reconsider the cause in light of *People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696 (*Johnson*).

Briefly stated, the trial court denied Demetrius Coleman's motion to suppress and various other motions for information in the personnel file of the arresting police officer. A jury convicted Coleman of possession of cocaine base for sale (Health & Saf. Code, § 11351.5) and the court sentenced him to three years in county jail and imposed various fines and fees. Coleman appealed. The main question in this case is whether the prosecution is required — pursuant to *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*), *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*), or Penal Code section 1054.1

— to run a testifying police officer’s rap sheet.¹ As we explain in more detail below, the answer is no. We also conclude Coleman forfeited his challenge to the imposition of a drug program fee (Health & Saf. Code, § 11372.7, subd. (a)) and attorney fees (§ 987.8, subd. (b)). We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The prosecution charged Coleman with possession of cocaine base for sale (Health & Saf. Code, § 11351.5). Before the preliminary hearing, Coleman filed a hybrid *Brady/Pitchess* motion for discovery of material in Richmond Police Officer Matthew Stonebreaker’s personnel file “indicating . . . internal and civilian complaints, investigations, or reports in which allegations of corruption, illegal arrests and/or searches, the fabrication of charges and/or evidence, acts of harassment or malicious conduct against citizens, dishonesty and improper tactics . . . or false arrest.” The motion also requested the City of Richmond Police Department (Police Department) produce “Officer Stonebreaker’s relevant criminal history, including any arrests or convictions involving crimes of moral turpitude. . . . whether that information is contained in personnel files or not.” In addition, Coleman requested the Police Department “run a ‘rap sheet’ on Officer Stonebreaker.”

Regarding *Brady*, Coleman contended he was entitled to Officer Stonebreaker’s criminal history information because the information would impeach Officer Stonebreaker, a testifying prosecution witness. Coleman claimed he needed the information “to competently defend [himself] in the underlying criminal prosecution and to cross-examine prosecution witnesses at trial.” Regarding *Pitchess*, Coleman argued there was good cause for disclosure of Officer Stonebreaker’s criminal history, if any, because Officer Stonebreaker made material misstatements in his police report. According to Coleman, Officer Stonebreaker’s truthfulness was “material to the case because his past misconduct would rebut any reasonable suspicion that Mr. Coleman was ever in possession of the narcotics.”

¹ Unless noted, all statutory references are to the Penal Code. The term “rap sheet” is a colloquialism for a record of arrests and prosecution.

Defense counsel's supporting declaration averred Coleman did not possess narcotics on the day of the incident and did not "toss[] a bag of cocaine from his person." Counsel stated the City, the Police Department, and/or the Contra Costa County District Attorney's Office possessed the materials and there was good cause to produce them because Officer Stonebreaker had a "tendency to fabricate incident reports and initiate detentions without reasonable suspicion." In addition, defense counsel stated information about Officer Stonebreaker's criminal history was relevant to impeach him at a motion to suppress hearing, preliminary examination, or trial. Finally, defense counsel's declaration attached Officer Stonebreaker's police report, where he stated he saw Coleman toss a bag of narcotics behind him, and Officer Danielle Evans's police report, where she stated: "While standing next to Coleman I did not observe him discard the suspected narcotics."

The City of Richmond (City) and the Police Department opposed the motion, arguing Coleman had not demonstrated the confidential information was material to the issues at the preliminary hearing, in part because defense counsel's supporting declaration did not allege "facts from which it is reasonable to conclude [] Officer [Stonebreaker] may have a criminal history or, if he does, that anything contained in that history may be relevant to the pending litigation." The City also stated it did not possess "summary criminal history" for Officer Stonebreaker and was not required to search for such information. As the City explained, "In compliance with California Department of Justice directives regarding access to the Automated Criminal History System, the City does not search for criminal history except on a 'need to know' basis and in accordance with state law. Under . . . sections 11105(b) and 13300(3)(b), the City may provide a summary criminal history to the court only after the court has determined that the information is needed in the course of its duties."

At a hearing, counsel for the City and the Police Department argued the *Pitchess* motion lacked "allegations supporting a search for a criminal history. . . . We have no information that leads us to believe there might be a criminal history" for Officer Stonebreaker and explained, "What is in the personnel file prior to employment, there is a

check, a pre-employment check, and that would be in the personnel file, if there were any disqualifying offenses. That's what already exists in there. [¶] In order to have permission to get more, there needs to be some sort of showing of necessity and . . . the DOJ wouldn't allow us to just run Live Scans; we cannot do that."

At the conclusion of the hearing, the court agreed to examine Officer Stonebreaker's personnel file for "dishonesty in terms of falsifying information" but explained, "It seems that the purpose of *Pitchess* is being stretched beyond its original intent. . . . I'm not going to order a [] rap sheet run on the officer. I believe that's something that's reserved for trial. . . . I'm also going to decline to give the date of birth of the officer [to defense counsel]. Should this case go forward — we've not even had a holding order to see if it's adequate to go to trial. [¶] Should it go forward, you can pursue that in the trial court." The court then conducted an in camera hearing pursuant to *Pitchess* and ordered the City to disclose information concerning a "complaint of false identifying information."

Coleman moved for reconsideration, arguing he was entitled to *Pitchess* discovery — including Officer Stonebreaker's criminal history — before the preliminary hearing. In the alternative, Coleman urged the court to order the City to disclose Officer Stonebreaker's birth date to the prosecution so the prosecution could run the rap sheet. The City and the Department opposed the motion and Coleman's request to order the City to disclose Officer Stonebreaker's birth date. They argued Coleman's original motion lacked allegations "supporting a reasonable belief that [] Officer [Stonebreaker] may have a criminal record. . . . The Court conducted an in camera review of the Officer's confidential records maintained by the Police Department and ordered disclosure of all relevant information in accordance with *Pitchess* procedure. Absent evidence that [] Officer [Stonebreaker] has a criminal history and that the criminal history may be relevant to Defendant's case, the Court has no grounds upon which to order the City to obtain a criminal history and the City has no right to request a criminal history on an Officer without a court order demonstrating that there is a need to know."

Following a hearing, the court denied the reconsideration motion, concluding the “original *Pitchess* motion did not have a sufficient basis of materiality or evidence for the court to consider . . . releasing the date of birth or rap sheet.” The court continued, “I don’t believe there’s any legal authority to provide a rap sheet . . . particularly without any showing whatsoever that a rap sheet would be relevant to this, as well as the date of birth is not relevant to the *Pitchess* motion.” As the court explained, “I granted the in camera review on the *Pitchess* motion based on the other aspects of the motion, to look for any evidence of the type of misconduct that was relevant and for which there was a material showing, but there was no sufficient showing for the release of the birth date, which is personal and private, or the rap sheet. [¶] I agree the City can’t do it [obtain Officer Stonebreaker’s rap sheet, if any] without a court order, and therefore, I am not going to change my original decision. The *Pitchess* motion as to the date of birth and/or running of a rap sheet is denied.”

Coleman did not move to dismiss on the grounds the prosecution violated its *Brady* obligation to disclose exculpatory information (See *People v. Gutierrez* (2013) 214 Cal.App.4th 343, 349 (*Gutierrez*)) nor did he seek writ relief from the order denying his request for Officer Stonebreaker’s rap sheet (*Hill v. Superior Court* (1974) 10 Cal.3d 812 (*Hill*)).

Motion to Suppress, Renewed Suppression Motion, and Motion in Limine

Before the preliminary hearing, Coleman moved to suppress, claiming the charge was based on “evidence derived from an unreasonable search and seizure.” At the combined motion to suppress and preliminary hearing, the parties presented the following evidence:

In September 2009, Richmond Police Officers Stonebreaker and Evans were in uniform on bicycle patrol in a residential area known for narcotics activity when they saw Coleman walking alone.² They rode up to Coleman, got off their bicycles, and stood

² Carlos English testified for Coleman. English, who is homeless and collects cans in shopping cart, described Officer Stonebreaker as a “nightmare” and claimed he turned over English’s shopping cart and took cans out of it, and “harass[ed] [English] for

about five feet away from him. They said, ““What’s up?”” Officer Stonebreaker asked Coleman for his name and date of birth and Coleman responded. At that point, Officer Evans performed a records check. As she did so, Officer Stonebreaker asked Coleman whether he was on probation or parole, and whether he had “anything illegal on him.” The officers told Coleman they were part of the bicycle patrol program and were “meeting residents in the area. [Coleman] stopped to talk” to the officers “to see what it was.” The officers issued no commands nor gave Coleman any directions.

While the officers spoke to Coleman — and about three minutes after they approached him — they learned he had an outstanding warrant. Officer Stonebreaker handcuffed Coleman and the officers waited “for a transport vehicle.” Coleman’s back was against a rod iron fence. Officer Stonebreaker stood in front of Coleman, on his left side. Officer Evans stood on Coleman’s other side, facing Officer Stonebreaker. Together, the officers and Coleman formed a triangular position. While they waited, Mr. Coleman “adjusted his pants a couple of times and while doing so he retrieved a clear plastic baggy containing an off-white chunky substance” that Officer Stonebreaker suspected was cocaine. Coleman “kind of moved his hands . . . back and forth. He did it a couple of times. As he’s doing so, he’s kind of smiling and laughing.” Coleman tossed the object away from him and it landed about two or three feet behind him, behind the fence. Officer Evans saw Coleman adjusting his clothes, but did not see him discard any narcotics.

A patrol car arrived. As Officer Evans escorted Coleman to the car, Officer Stonebreaker retrieved the object: a clear plastic baggie containing 18 individually packaged pieces and another baggy containing “a couple of large chunks” — or about 6.29 grams — of cocaine base. At that point, Coleman “became very angry” and “very combative, trying to hit the door with his shoulder, very verbally abusive, and saying whatever we found is not his.” When the officers searched Coleman, they found \$193 in small bills.

nothing.” Officer Stonebreaker did not remember overturning English’s shopping cart or taking recyclables from it.

At the conclusion of the preliminary hearing, the court denied Coleman's motion to suppress, concluding the encounter was consensual, and held Coleman to answer the charge. Coleman filed a motion to set aside the information (§ 995) and renewed suppression motion (§ 1538.5, subd. (i)). The trial court denied the motions. It noted the officers "did not issue any commands; they did not block [Coleman's] path; they did not display any weapons. The evidence did not reflect a physical touching of [Coleman's] person or a tone of voice indicating that it was mandatory for [Coleman] to answer Officer Stonebreaker's questions. [¶] The encounter occurred in daylight at a seemingly busy location. The public nature of the encounter is arguably increased because the officers were on bicycles — no patrol cars to shield from public view whatever was going on." Finally, the court concluded the warrant check did not transform the encounter into a detention.

Later, Coleman moved in limine for an order — pursuant to *Brady* and section 1054.1 — requiring the prosecution to, among other things, run rap sheets on all prosecution witnesses, "including any police witnesses, if they have not done so already." At a hearing, the court explained Coleman was requesting the "prosecution run rap sheets on all prosecution witnesses including any police witnesses if they have not already done so. Essentially, the *Brady* obligation." When the court asked the prosecutor whether he objected, the prosecutor responded, "[n]o objection" and noted he had disclosed Officer Stonebreaker and Evans's police reports and a "supplemental police report which was discovered." Then the court stated, "I will then grant [the motion in limine]. The People have complied with their *Brady* requirements."

At that point, defense counsel clarified she "requested specifically that rap sheets be run on all prosecution's witnesses, including officers." The court explained it was granting the motion in limine "except that I will not order rap sheets to be run on the officers. However, I will require the People to comply with *Brady*. Somewhat of a distinction." In response, the prosecution stated, "Yes, your Honor." Defense counsel objected, arguing: "I think that the prosecution should be required to run rap sheets on their police witnesses. There's no reason to exempt them. And it's my understanding

that the prosecution does run rap sheets on all of their other witnesses as well as defense witnesses and sometimes even jurors.” The court noted the objection and overruled it.

Verdict and Sentencing

The jury convicted Coleman of possession of cocaine base for sale (Health & Saf. Code, § 11351.5) and the court sentenced Coleman to three years in jail. Among other things, the court ordered Coleman to pay a \$570 drug program fee (Health & Saf. Code, § 11372.7, subd. (a)) and \$500 in attorney fees (§ 987.8, subd. (b)). At the sentencing hearing, the court stated: “[Coleman is] to pay a court security fee of \$40, a court conviction assessment of \$30, a probation report fee of \$176, a criminal justice administration fee of . . . \$564. [¶] A lab analysis fee . . . of \$190 and a drug program fee of \$570. [¶] All of these other fines and fees, except for the \$600 restitution fee, are based on his ability to pay. So probation will do an analysis of his ability to pay and it will be set that way. [¶] Attorney’s fees will be assessed in the amount of \$500.” Defense counsel did not object to the imposition of these fees.³

Our Prior Decision

In our October 2014 decision, we affirmed in part and reversed in part. We affirmed the court’s denial of Coleman’s motion to suppress and the denial of his motions for an order requiring the prosecution to run Officer Stonebreaker’s rap sheet. We reversed the order imposing the Health and Safety Code section 11372.7 drug program

³ The probation report did not recommend the imposition of the drug program fee or attorney fees, nor did it address Coleman’s ability to pay such fees. The report, however, described Coleman’s education and employment history. Coleman — who was 39 years old at the sentencing hearing — earned his General Education Diploma (G.E.D.) and took several classes toward earning an administrative justice certificate. He dropped out of the program after losing his driver license. Coleman suffers from numerous health problems and had been diagnosed with schizophrenia. The probation report described Coleman as “employable” and noted he has “electrical skills. He was employed by the Chevron Refinery in Richmond performing fire watch duties from 1993 to 1997. . . . He was employed by Veraflow in Richmond, which manufactures parts for the Chevron Refinery. Additionally he possesses skills in painting and landscaping.” Before Coleman was incarcerated, he was the primary caregiver for his ailing sister. Coleman “reported that he does not have a checking or saving account. He advised that he has no assets.”

fee and the section 987.8 attorney fees and directed the trial court on remand to determine Coleman's ability to pay those fees.

The California Supreme Court granted review (Jan. 16, 2015, S222929) and deferred further action pending consideration and disposition of a related issue in *Johnson*. After issuing its decision in *Johnson*, the Supreme Court transferred this case back to this court, directing us to vacate our prior decision and to reconsider the cause in light of *Johnson*. (See Cal. Rules of Court, rule 8.258(d).) We vacated our decision and ordered the parties to submit supplemental briefs on: (1) the application of *Johnson* to this case; and (2) whether Coleman forfeited his challenge to the Health and Safety Code section 11372.7 drug program fee and section 987.8 attorney fees. Having considered the supplemental briefing, we affirm.

DISCUSSION

I.

The Court Properly Denied Coleman's Motion to Suppress

Coleman contends the trial court erred by denying his renewed suppression motion (§§ 995, 1538.5, subd. (i)). "A criminal defendant is permitted to challenge the reasonableness of a search or seizure by making a motion to suppress at the preliminary hearing. [Citation.] If the defendant is unsuccessful at the preliminary hearing, he or she may raise the search and seizure matter before the superior court under the standards governing a section 995 motion. [Citation.] . . . [¶] In a proceeding under section 995, the superior court's role is similar to that of an appellate court reviewing the sufficiency of the evidence to sustain a judgment. [Citations.] The superior court merely reviews the evidence; it does not substitute its judgment on the weight of the evidence nor does it resolve factual conflicts. [Citation.] On appeal from a section 995 review of the denial of a defendant's motion to suppress, we review the determination of the magistrate at the preliminary hearing. [Citations.] We must draw all presumptions in favor of the magistrate's factual determinations, and we must uphold the magistrate's express or implied findings if they are supported by substantial evidence. [Citations.]" (*People v. McDonald* (2006) 137 Cal.App.4th 521, 528-529 (*McDonald*).)

To determine “whether the challenged search or seizure was reasonable under the Fourth Amendment, we review the magistrate’s factual determinations under the substantial evidence standard. [Citation.] We judge the legality of the search by ‘measur[ing] the facts, as found by the trier, against the constitutional standard of reasonableness.’ [Citation.] Thus, in determining whether the search or seizure was reasonable on the facts found by the magistrate, we exercise our independent judgment.” (*McDonald, supra*, 137 Cal.App.4th at p. 529.)

Police contacts with individuals fall into three broad categories: (1) consensual encounters; (2) detentions; and (3) formal arrests. (*In re Manuel G.* (1997) 16 Cal.4th 805, 821 (*Manuel G.*); *Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784 (*Wilson*).) The Fourth Amendment does not protect every encounter between the police and a citizen. (*In re Christopher B.* (1990) 219 Cal.App.3d 455, 460.) As the United States Supreme Court has explained, “law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.” (*Florida v. Royer* (1983) 460 U.S. 491, 497; *Wilson, supra*, 34 Cal.3d at p. 789; *Florida v. Bostick* (1991) 501 U.S. 429, 434 (*Bostick*) [a detention does not occur when a police officer approaches a person on the street and “asks a few questions”].)

“[N]o reasonable suspicion is required on the part of the officer” before initiating a consensual encounter. (*Manuel G., supra*, 16 Cal.4th at p. 821; *People v. Hughes* (2002) 27 Cal.4th 287, 327.) To determine whether an encounter is consensual, a court considers “all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter.” (*Bostick, supra*, 501 U.S. at p. 439; *Michigan v. Chesternut* (1988) 486 U.S. 567, 573.) Put another way, an encounter is consensual if, after considering the totality of the circumstances, “a reasonable person would feel free to disregard the police and go about

his or her business. . . .” (*Manuel G.*, *supra*, 16 Cal.4th at p. 821.) “What constitutes a restraint on liberty such that a person would conclude that he is not free to ‘leave’ varies with the particular police conduct at issue and the setting in which the conduct occurs.” (*Michigan v. Chesternut*, *supra*, 486 U.S. at p. 573.)

In contrast, a detention requires “articulable suspicion that the person has committed or is about to commit a crime.” (*Manuel G.*, *supra*, 16 Cal.4th at p. 821.) A detention occurs when the police, by physical force or show of authority, have in some way restrained a person’s liberty. (*Bostick*, *supra*, 501 U.S. at p. 434.) “Circumstances establishing a seizure,” such as “the presence of several officers, an officer’s display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer’s request might be compelled.” (*Manuel G.*, *supra*, 16 Cal.4th at p. 821; cf. *People v. Brown* (2015) 61 Cal.4th 968, 978 [detention where officer stopped behind the defendant’s parked car and activated emergency lights]; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1254.) Other factors include the time and place of the encounter, whether the defendant was informed he was free to leave, whether the police indicated the defendant was suspected of a crime, whether the police retained the defendant’s documents, and whether the police exhibited other threatening behavior. (See, e.g., *Wilson*, *supra*, 34 Cal.3d at p. 790; *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227.)

Coleman contends he was detained because the officers “asked him a series of intrusive questions” about “whether he was on probation or parole and had anything illegal on his person.” According to Coleman, a reasonable person in this situation would not feel free to leave. We disagree and conclude Coleman was not detained. The officers rode their bicycles up to Coleman in a public place and stopped several feet away from him. They did not command him to stop. The officers did not block his path or display any weapons. They did not touch him. As Officer Stonebreaker explained, Coleman “stopped to talk to us to see what it [the bicycle patrol program] was. That’s all.” (*United States v. Drayton* (2002) 536 U.S. 194, 197-200 [defendant not detained when an officer wearing a concealed weapon boarded a bus, showed his badge to the defendant,

questioned him, arrested his companion, and then asked the defendant to consent to a patdown search].)

Coleman's reliance on *Wilson*, *supra*, 34 Cal.3d 777, does not alter our conclusion. In *Wilson*, an undercover narcotics officer — who had been monitoring incoming flights at an airport to discover transportation of drugs — saw the defendant and another man arrive at the airport on a flight from Miami. (*Id.* at p. 780.) The officer followed the defendant and the other man through the terminal, and then approached the defendant as he stood next to his car parked at the curb. (*Id.* at pp. 780-781.) The officer asked the defendant if he “‘might have a minute of his time’” and, when the defendant agreed, the officer told the defendant he was conducting a narcotics investigation, and “‘had received information that he would be arriving today from Florida carrying a lot of drugs.’” (*Id.* at p. 781, italics in original & fn. omitted.) The California Supreme Court concluded the defendant was detained when the officer accused him of transporting narcotics because a reasonable person, when confronted by a narcotics officer and accused of importing illegal drugs, would not feel free to leave. (*Id.* at pp. 790-791.)

Wilson is distinguishable. Here, Officer Stonebreaker did not accuse Coleman of committing a crime. He simply asked Coleman general questions about his name and date of birth. That Officer Stonebreaker asked Coleman whether he was on probation or parole and whether he possessed anything “illegal” does not make this situation similar to the one in *Wilson*, where the police officer followed the defendant and told him he was under suspicion of transporting narcotics. A “detention does not occur when a police officer merely approaches an individual on the street and asks a few questions.” (*Manuel G.*, *supra*, 16 Cal.4th at p. 821.)

Nor did the fact that the officers performed a warrant check transform the encounter into a detention. (*People v. Bouser* (1994) 26 Cal.App.4th 1280, 1282 (*Bouser*).) *Bouser* is on point. In that case, a police officer in a patrol car saw the defendant near a dumpster in an alleyway known for drug dealing. Nervous, the defendant began walking in the opposite direction. (*Id.* at p. 1282.) The officer parked his vehicle, walked up to the defendant, and asked to speak with him. The defendant

stopped and allowed the officer to speak with him. The officer asked the defendant general information questions, such as his name, date of birth, and prior arrest history. (*Ibid.*) The officer then used this information to fill out “a field interview card” and radioed to check for outstanding warrants. (*Ibid.*) He did not tell the defendant he was checking for warrants, but the defendant heard the officer on his radio. The records check revealed an outstanding traffic warrant, which was relayed to the officer 10 minutes after his initial contact with the defendant. (*Id.* at p. 1283.) The officer arrested the defendant and found heroin in his pants pocket. (*Id.* at p. 1286.)

The *Bouser* court rejected the argument “that a warrant check automatically transforms a consensual police encounter into a seizure.” (*Bouser, supra*, 26 Cal.App.4th at p. 1287.) Evaluating the warrant check as “a single circumstance that must be viewed in light of the other facts presented[,]” *Bouser* concluded the encounter was consensual. (*Ibid.*) In doing so, the court acknowledged the defendant may have suspected “he was somehow being investigated” and “reasonably may have felt the subject of general suspicion” (*Ibid.*) Nevertheless, the court observed “neither the questioning nor the warrant check related to specific and identifiable criminal activity. Moreover, [the officer] did not order [the defendant] to do anything or turn over anything to him to hold while the brief check was completed. Nor did [the officer] draw his weapon, make any threatening gestures, or utilize his car’s lights or siren.” (*Ibid.*)

The same is true here. As in *Bouser*, the warrant check did not convert the encounter into a detention. Here, Officer Stonebreaker asked questions about Coleman’s identity and criminal background while Officer Evans performed a warrant check that took three minutes. Officer Stonebreaker’s questions did not “relate[] to specific and identifiable criminal activity” and neither officer drew a weapon, made a threatening gesture, or commanded Coleman to do anything. (*Bouser, supra*, 26 Cal.App.4th at p. 1287.) We conclude the trial court properly denied Coleman’s renewed motion to suppress.

II.

The Court Did Not Err by Declining to Compel the Prosecution to Run Officer Stonebreaker's Rap Sheet

Coleman contends he “had a right to discovery of Officer Stonebreaker’s criminal history, if any” under *Brady*, *Pitchess*, and section 1054.1 and argues the court should have ordered the prosecution to run Officer Stonebreaker’s rap sheet. To place the issues in context, we briefly describe “criminal offender record information,” which consists of “records and data compiled by criminal justice agencies for purposes of indentifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.” (§ 13102.) “Criminal offender record information” is commonly known as a “rap sheet” or a “CLETS rap sheet.” (See Cal. Code Regs., tit. 11, § 701; *In re M.L.* (2012) 205 Cal.App.4th 210, 217, fn. 4; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 658-659.)⁴

⁴ “In 1973, the Legislature, . . . enacted legislation designed to make ‘the recording, reporting, storage, analysis, and dissemination of criminal offender record information . . . more uniform and efficient, and better controlled and coordinated.’ (Pen. Code, § 13100, subd. (e).)” (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 161 (*Westbrook*).) “The statutory scheme applies to criminal justice agencies at all levels of state government which perform, as their principal function, activities which relate to ‘the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders’ or ‘the collection, storage, dissemination or usage of criminal offender record information.’ (Pen. Code, § 13101.) Agencies falling within this definition are required to record ‘criminal offender record information’ in a form authorized by statute (Pen. Code, § 13125), and trial courts are required to report to the state Department of Justice (Pen. Code, §§ 13150, 13151) the outcome of most criminal cases. (Pen. Code, §§ 13150, 13151.)” (*Westbrook*, at pp. 161-162, fns. omitted.)

The Department of Justice “maintains a central database containing master identification and criminal history records, including such information as the ‘name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies, and booking numbers, charges, dispositions, and similar data. (Pen. Code, § 11105(a).)’ . . . In addition, many local law enforcement agencies maintain criminal history databases.” (CEB Cal. Criminal Law, Procedure and Practice (2013 ed.) § 12.5, pp. 284-285; see also § 13300.) “[S]ection 13300 sets forth significant restrictions on access to “[l]ocal summary criminal history information” Certain persons, agencies

Rap sheets themselves are not discoverable. (*People v. Roberts* (1992) 2 Cal.4th 271, 308 (*Roberts*); *People v. Santos* (1994) 30 Cal.App.4th 169, 175.) However, “much, if not all of the information contained in the rap sheets is discoverable. [Citations.]” (Cal. Crim. Law Procedure & Practice (2014) § 11.8, p. 250 (CEB).) “For more than 30 years the California Supreme Court has held that the prosecution is under a *Brady* obligation to reveal the existence of felony convictions of prosecution witnesses.” (Pipes et al. Cal. Criminal Discovery (4th ed. 2008) § 1.31.1, p. 99 (Pipes), citing *Hill, supra*, 10 Cal.3d 812; *Roberts, supra*, 2 Cal.4th at p. 308; *In re Ferguson* (1971) 5 Cal.3d 525, 533.) Such exculpatory and impeachment evidence also includes information relating to charges pending against prosecution witnesses (*People v. Martinez* (2002) 103 Cal.App.4th 1071, 1080; *People v. Coyer* (1983) 142 Cal.App.3d 839, 842) and prosecution witnesses’ probationary status. (*Millaud v. Superior Court* (1986) 182 Cal.App.3d 471, 476-477; Pipes, *supra*, § 1:35.1, p. 111.)

A. The Prosecution Need Not Run a Testifying Police Officer’s Rap Sheet to Comply with *Brady*

Coleman contends the court’s refusal to order the disclosure of Officer Stonebreaker’s criminal history information, if any, requires reversal pursuant to *Brady*. According to Coleman, the court erred by “carving out an exception” for Officer Stonebreaker and declining to order the prosecution to run his rap sheet. We disagree. As we explain below, we conclude the prosecution has a duty pursuant to *Brady* to learn of material impeachment information about police officer witnesses within the prosecution’s constructive possession, but the prosecution cannot be forced to comply with its *Brady* duty to investigate in a particular manner.

and entities are entitled to receive the information if it is ‘needed in the course of their duties.’ [Citation.]” (*Westbrook, supra*, 27 Cal.App.4th 157, 162, fn. omitted; see also § 11105, subd. (b) and Cal. Code Regs. tit. 11, § 703(b) [“Criminal offender record information may be released, on a need-to-know basis, only to persons or agencies authorized by court order, statute, or decisional law to receive criminal offender record information”].) As of 1997, it was “the policy of the Department of Justice to release rap sheets only to prosecutors . . . and defense disclosure requests must go through the prosecutor’s office.” (*People v. Little* (1997) 59 Cal.App.4th 426, 432 (*Little*).

The prosecution's duty under *Brady* is well-established and we need not recite it here. (See *People v. Salazar* (2005) 35 Cal.4th 1031, 1042-1043; *In re Steele* (2004) 32 Cal.4th 682, 697.) As stated above, information found on a rap sheet about a witnesses' criminal history may meet *Brady*'s standard of materiality depending on the circumstances in a particular case. (See *infra*, at p. 15; see *People v. Lewis* (2015) 240 Cal.App.4th 257, 262 (*Lewis*) [discussing whether evidence of arresting police officer's criminal history is material under *Brady*].) The People do not argue otherwise. They concede the prosecution had an obligation to disclose material favorable evidence under *Brady* and that — under *Little* — Coleman had “the right to information relating to [Officer Stonebreaker's] convictions of any felon[ies] or misdemeanor convictions involving moral turpitude” if the information was “in the possession of the prosecuting attorney or the investigating agencies” or “‘reasonably accessible’ to the prosecutor.” (See *Johnson*, *supra*, 61 Cal.4th at p. 715.)

But even when material information is within the constructive possession of the prosecution, *Brady* does not empower a defendant to compel the precise manner by which prosecutors learn whether such information exists. To be sure, prosecutors need some mechanism for ensuring they learn of *Brady* material within their constructive possession. (See *Giglio v. United States* (1972) 405 U.S. 150, 154; see also *Johnson*, *supra*, 61 Cal.4th at pp. 706-706, 721.) But the choice of that mechanism is within district attorneys' broad “discretionary powers in the initiation and conduct of criminal proceedings,” which “extend from the investigation and gathering of evidence relating to criminal offenses [citation], through the crucial decisions of whom to charge and what charges to bring, to the numerous choices the prosecutor makes at trial regarding ‘whether to seek, oppose, accept, or challenge judicial actions and rulings.’” (*People v. Eubanks* (1996) 14 Cal.4th 580, 589.) As such, that choice “generally is not subject to supervision by the judicial branch.” (*People v. Birks* (1998) 19 Cal.4th 108.)

Our high court's recent decision in *Johnson* supports our conclusion. In that case, the San Francisco Police Department notified the prosecutor that two police officers who were “potentially important witnesses in the case” had material in their personnel files

“‘that may be subject to disclosure under’ *Brady*.” (*Johnson, supra*, 61 Cal.4th at p. 706.) The prosecutor filed a *Pitchess* motion asking the trial court to review the officers’ personnel files in camera to determine whether they contained *Brady* material. (*Ibid.*) “The court denied the prosecution’s motion for in camera *Brady* review, and ordered the police department ‘to give the District Attorney access to the personnel files of [the officers] ‘so the prosecution can comply with its *Brady* mandate.’” (*Id.* at p. 708.)

As relevant here, the California Supreme Court granted review to determine how the prosecution complies with *Brady* when it learns police officer personnel records might contain exculpatory material. (*Johnson, supra*, 61 Cal.4th at pp. 705, 714-715.) Our high court concluded, “the prosecution fulfills its *Brady* duty as regards the police department’s tip if it informs the defense of what the police department informed it, namely, that the specified records might contain exculpatory information.” (*Id.* at p. 705.) As *Johnson* explained, “[i]f the prosecution informs the defense of what it knows regarding information in confidential personnel records, and the defense can seek that information itself, no evidence has been suppressed” and “the prosecution fulfills its *Brady* obligation if it shares with the defendant any information it has regarding whether the personnel records contain *Brady* material[.]” (*Id.* at pp. 715, 716.) The *Johnson* court concluded, “[t]he prosecution need not do anything in these circumstances beyond providing to the defense any information it has regarding what the records might contain—in this case informing the defense of *what* the police department had informed it.” (*Id.* at p. 722, italics added.)

Unlike *Johnson*, the Police Department did not tell the prosecutor Officer Stonebreaker’s personnel records might contain *Brady* material. To the contrary, the City stated there was no rap sheet in Officer Stonebreaker’s personnel file and both the City and the Police Department stated they did not believe Officer Stonebreaker had a criminal history. A logical reading of *Johnson* compels the conclusion that the prosecution need not run a testifying police officer’s rap sheet to comply with *Brady*; the prosecution must simply notify the defense of possible *Brady* material and its location.

Under *Johnson*, the prosecution retains flexibility in the manner in which it complies with *Brady*.

Although we conclude a defendant cannot compel the prosecution to run rap sheets on police officer witnesses pursuant to *Brady*, we note the prosecution bears the risk of reversal if the adopted procedures are inadequate and *Brady* material is not disclosed. (*Lewis, supra*, 240 Cal.App.4th at pp. 265, 267 [“concluding there was no *Brady* violation” but reminding prosecutors “the People’s interest is not to win convictions but instead to ensure that justice is done. . . . this interest is served through a faithful adherence to discovery obligations and, in case of doubt, erring on the side of disclosure and preserving the appearance of fairness”]; *People v. Williams* (2013) 58 Cal.4th 197, 256.) We conclude the court did not err by requiring the prosecution to comply with *Brady* but declining to order the prosecution to run Officer Stonebreaker’s rap sheet. (*Johnson, supra*, 61 Cal.4th at pp. 715, 722.)

B. The Court Did Not Abuse Its Discretion by Denying Coleman’s *Pitchess* Motion to the Extent it Sought Officer Stonebreaker’s Rap Sheet and Birth Date

Coleman contends he was entitled to Officer Stonebreaker’s criminal history, if any, pursuant to *Pitchess*. “A defendant has a limited right to discovery of a peace officer’s confidential personnel records if those files contain information that is potentially relevant to the defense. [Citations.]” (*People v. Moreno* (2011) 192 Cal.App.4th 692, 700-701 (*Moreno*).) The mechanics of a *Pitchess* motion are well established. (See *Johnson, supra*, 60 Cal.4th at pp. 710-712; *People v. Mooc* (2001) 26 Cal.4th 1216, 1219-1220 (*Mooc*); Evid. Code, §§ 832.7, 832.8, 1043-1047.) We review the court’s ruling on Coleman’s *Pitchess* motion for abuse of discretion. (*Moreno, supra*, 192 Cal.App.4th at p. 701.)

“Traditionally, *Pitchess* motions seek information about past complaints by third parties of excessive force, violence, dishonesty, or the filing of false police reports contained in the officer’s personnel file.” (*Rezek v. Superior Court* (2012) 206 Cal.App.4th 633, 640 (*Rezek*).) We need not determine whether a police officer’s rap

sheet constitutes a “personnel record” under sections 832.7 and 832.8, nor whether a criminal defendant may obtain a police officer’s rap sheet pursuant to *Pitchess* (see *California Highway Patrol v. Superior Court (Luna)* (2000) 84 Cal.App.4th 1010, 1024 [suggesting *Pitchess* governs a prosecutor’s duty to disclose peace officers’ acts of misconduct involving moral turpitude]; *Fletcher v. Superior Court* (2002) 100 Cal.App.4th 386, 400 [“*Pitchess* may also be used to discover information to impeach an officer’s credibility”].) As we have explained, the City stated there was no rap sheet in Officer Stonebreaker’s personnel file and the City and the Police Department stated they did not believe Officer Stonebreaker had a criminal history.⁵

Coleman concedes “one of the requirements of *Pitchess* is that the information be in possession of the law enforcement agency.” (See *Rezek, supra*, 206 Cal.App.4th at pp. 639, 642 “[t]he Evidence Code provides a limited right to discovery of an officer’s personnel file maintained pursuant to . . . section 832.5” and noting the prosecutor must comply with ““*Pitchess* requirements for disclosure of information *contained* in confidential peace officer records,”” italics added].) As Coleman recognizes, “[i]f the City did not have the officer’s criminal record . . . the proper method of obtaining the information was a general discovery request under *Brady* and section 1054.1.” Here, the court was within its discretion to deny Coleman’s *Pitchess* motion for Officer Stonebreaker’s criminal history where there was no rap sheet or criminal history information in Officer Stonebreaker’s personnel file.⁶

⁵ Our high court recently held “the prosecution does not have unfettered access to confidential personnel records of police officers who are potential witnesses in criminal cases. Rather, it must follow the same procedures that apply to criminal defendants, i.e., make a *Pitchess* motion, in order to seek information in those records.” (*Johnson, supra*, 61 Cal.4th at p. 705.)

⁶ As stated above, the court conducted an in camera hearing pursuant to *Pitchess* and reviewed Officer Stonebreaker’s personnel file and a record of the police department’s investigation of complaints and investigations for information relevant to Officer Stonebreaker’s “credibility,” particularly “for dishonesty in terms of falsifying information.” At Coleman’s request, we reviewed the sealed in camera hearing transcript. The custodian of records brought Officer Stonebreaker’s personnel file and a

People v. Cruz (2008) 44 Cal.4th 636 (*Cruz*) is instructive. There, the defendant claimed the court erred by denying his *Pitchess* motion for information in two of three police officers' personnel files. (*Id.* at p. 669.) The California Supreme Court disagreed. It concluded the trial court did not abuse its discretion by denying the motion as to the two police officers in part because the defendant could not "demonstrate prejudice on a finding of error, as county counsel's representations at the hearing on the motion below, and the trial court's statements upon completion of its review of [the third officer's] confidential personnel files, together make clear that no information of the nature being sought through the discovery motion was to be found in any of the three officers' personnel files. [Citation.]" (*Id.* at pp. 670-671.) Here as in *Cruz*, there was "no information of the nature being sought" in Officer Stonebreaker's personnel file and, as a result, Coleman cannot demonstrate prejudice from the denial of his *Pitchess* motion seeking Officer Stonebreaker's rap sheet.

Coleman also suggests the court erred by denying his *Pitchess* motion to the extent it sought Officer Stonebreaker's birth date. We are not persuaded. While a police officer's birth date may be discovered only by means of a *Pitchess* motion (*Garden Grove Police Department v. Superior Court* (2001) 89 Cal.App.4th 430, 433-435), the denial of Coleman's *Pitchess* motion for Officer Stonebreaker's birth date was not prejudicial because Coleman concedes he sought Officer Stonebreaker's date of birth to enable the prosecution to "run a criminal background check" on the officer. As discussed above, we have concluded the prosecution has no obligation to run a police officer's rap sheet.

record of Internal Affairs Complaints Investigations to the hearing. The court placed the custodian under oath, described the contents of the personnel file and the Internal Affairs Complaints Investigations, and reviewed them. We conclude the record is adequate to determine what documents the court reviewed. We also conclude the court followed the procedure outlined by the California Supreme Court for *Pitchess* motions and did not abuse its discretion by ordering the disclosure of one complainant. (*Mooc, supra*, 26 Cal.4th at p. 1229; *People v. Prince* (2007) 40 Cal.4th 1179, 1285-1286.)

C. The Court Did Not Err By Declining to Compel the Prosecution to Run Officer Stonebreaker's Rap Sheet Pursuant to Section 1054.1

Coleman claims the court should have ordered the prosecution to run Officer Stonebreaker's rap sheet pursuant to section 1054.1, which requires the prosecuting attorney to "disclose to the defendant and or his . . . attorney all of the following information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies: [¶] . . . [¶] (d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial. [¶] (e) Any exculpatory evidence." (See *Jones v. Superior Court* (2004) 115 Cal.App.4th 48, 57-58; CEB, *supra*, § 11.7, at p. 249.) We disagree. Section 1054.1 does not compel the manner by which the prosecutor must inquire and disclose of the existence of a material prosecution witness's felony convictions.

Coleman's reliance on *Little, supra*, 59 Cal.App.4th 426 does not alter our conclusion. *Little* held "an informal request for standard reciprocal discovery" pursuant to section 1054.1 "is sufficient to create a prosecution duty to disclose the felony convictions of all material prosecution witnesses if the record of conviction is "reasonably accessible" to the prosecutor." (*Little, supra*, 59 Cal.App.4th at p. 427.) *Little* holds the prosecution must, "on a standard discovery request[,] inquire 'of the existence'" of felony convictions for certain witnesses and disclose them (*id.* at p. 433) but it does not compel the means by which prosecutors "inquire" of the existence of such felony convictions. That the "prosecution must investigate key prosecution witness' criminal history and disclose felony convictions" (*J.E. v. Superior Court* (2014) 223 Cal.App.4th 1329, 1335) does not require the prosecution to run a rap sheet as part of that investigation.

III.

Coleman Forfeited His Claim Regarding the Health and Safety Code Section 11372.7 Drug Program Fee

Coleman contends the \$570 drug program fee must be reversed. Health and Safety Code section 11372.7, subdivision (a) requires defendants convicted of certain drug offenses to “pay a drug program fee in an amount not to exceed [\$150] for each separate offense.” (*People v. Corrales* (2013) 213 Cal.App.4th 696, 701.) This drug program fee “is mandatory unless the defendant is unable to pay.” (*People v. Clark* (1992) 7 Cal.App.4th 1041, 1050.) The court must “determine whether or not the person who is convicted of a violation of this chapter has the ability to pay a drug program fee. . . . If the court determines that the person does not have the ability to pay a drug program fee, the person shall not be required to pay a drug program fee.” (Health & Saf. Code, § 11372.7, subd. (b).) The court, however, is not required to make an express finding of ability to pay the drug program fee. (See *People v. Martinez* (1998) 65 Cal.App.4th 1511, 1516 (*Martinez*); *People v. Staley* (1992) 10 Cal.App.4th 782, 785.)

When the trial court imposed the drug program fee, it stated, “[Coleman is] to pay . . . a drug program fee of \$570. [¶] All of these other fines and fees, except for the . . . restitution fee, are based on his ability to pay. So probation will do an analysis of his ability to pay and it will be set that way. . . .” Defense counsel did not object to the imposition of the drug program fee at the sentencing hearing, and there is no indication he raised the issue with the probation department.

As his supplemental briefing makes clear, Coleman’s challenge to the drug program fee is not that the court impermissibly delegated its duty to determine ability to pay to the probation department but that the court did not determine his ability to pay, and that he is unable to pay the fee. In other words, Coleman’s claim is the court erred by imposing the drug program fee without determining his ability to pay that fee. This claim is forfeited.⁷ *McCullough* is instructive. There, the trial court imposed a booking

⁷ In our 2014 opinion, we concluded Coleman did not forfeit his challenge to the drug program fee because the imposition of the fee was an unauthorized sentence

fee under Government Code section 29550.2 without conducting an ability-to-pay hearing. (*McCullough, supra*, 56 Cal.4th at p. 591.) Our high court held a defendant has “the right to a determination of his ability to pay the booking fee before the court order[s] payment” (*id.* at pp. 592-593) but “a defendant who fails to contest the booking fee when the court imposes it forfeits the right to challenge it on appeal.” (*Id.* at p. 591.) As the court explained, the People had the burden of proving a defendant’s ability to pay the booking fee, but “a defendant who does nothing to put at issue the propriety of imposition of a booking fee forfeits the right to challenge the sufficiency of the evidence to support imposition of the booking fee on appeal. . . .” (*Id.* at p. 598.)

The same is true here. Coleman had “the right to a determination of his ability to pay” the drug program fee before the court ordered payment” (*McCullough, supra*, 56 Cal.4th at pp. 592-593) but his failure to “contest the booking fee when the court imposes it forfeits the right to challenge it on appeal.” (*Id.* at p. 591; see also *Martinez, supra*, 65 Cal.App.4th at p. 1517 [declining to impose a drug program fee pursuant to Health and Safety Code section 11372.7 was not an unauthorized sentence; challenge to court’s failure to impose the fee forfeited because “factual issues come into play in determining whether a defendant has the ability to pay” the otherwise mandatory drug program fee]; *Trujillo, supra*, 60 Cal.4th at p. 858 [“to place the burden on the defendant to assert noncompliance with section 1203.1 in the trial court as a prerequisite to challenging the imposition of probation costs on appeal is appropriate”].)

presenting a pure question of law. When we filed our opinion in 2014, the application of the forfeiture law to various sentencing fines and fees was unsettled. (See *People v. Aguilar*, review granted Nov. 26, 2013, S213571 [section 987.8 attorney fees, probation supervision fee, and criminal justice administration fee]; *People v. Trujillo*, review granted Nov. 26, 2013, S213687 [presentence investigation fee and probation supervision fee]; *People v. Valenzuela*, review granted Jan. 15, 2014, S214485 [crime prevention fine].) In early 2015, just before the California Supreme Court granted review in this case, it decided the companion cases *People v. Trujillo* (2015) 60 Cal.4th 850 and *People v. Aguilar* (2015) 60 Cal.4th 862 (*Aguilar*), which extended the forfeiture rule announced in *People v. McCullough* (2013) 56 Cal.4th 589 (*McCullough*) to probation supervision and presentence investigation fees, and to attorney fees.

IV.

Coleman Forfeited His Challenge to the Imposition of Section 987.8 Attorney Fees

Coleman's final contention is the court erred by ordering him to pay \$500 in attorney fees pursuant to section 987.8.⁸ We ordered the parties to submit supplemental briefing on whether forfeiture principles apply to section 987.8 attorney fee awards. We

⁸ Section 987.8, subdivision (b) provides in relevant part: "In any case in which a defendant is provided legal assistance, . . . upon conclusion of the criminal proceedings in the trial court, . . . the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof. The court may, in its discretion, hold one such additional hearing within six months of the conclusion of the criminal proceedings. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided."

The court's written order concerning attorney fees is a preprinted form. It states: "[A] county officer will interview you to determine if you are able to pay all or part of the services of the attorney appointed by the Court to handle your case. If the Probation Collection Unit finds that you are able to pay a certain amount, and you do not agree, you have the right to a hearing in this Court to decide what amount, if any, you must pay. At the hearing you will have the right to: (i) be heard in person, (ii) present witnesses and other documentary evidence, (iii) confront and cross-examine adverse witnesses, and (iv) have the evidence against you disclosed to you. You are also entitled to have a copy of any written recommendation of the county officer and a written statement of any findings of the court. [¶] If you do not go to the Probation Collection Unit, as ordered, you waive (give up) your right to a hearing, and the Court will enter a judgment against you, ordering you to pay for the services of your attorney." Coleman signed the order, indicating that he "acknowledge[d] receipt of the above order and under[stood] that if [he did] not report as ordered, the court [would] enter a judgment against [him] for the total costs of legal services of [his] attorney."

Section 987.8, subdivision (d) provides: "If the defendant, after having been ordered to appear before a county officer, has been given proper notice and fails to appear before a county officer within 20 working days, the county officer shall recommend to the court that the full cost of the legal assistance shall be ordered to be paid by the defendant. The notice to the defendant shall contain all of the following: [¶] (1) A statement of the cost of the legal assistance provided to the defendant as determined by the court. [¶] (2) The defendant's procedural rights under this section. [¶] (3) The time limit within which the defendant's response is required. [¶] (4) A warning that if the defendant fails to appear before the designated officer, the officer will recommend that the court order the defendant to pay the full cost of the legal assistance provided to him or her."

have considered that briefing and conclude Coleman forfeited his challenge to the imposition of the attorney fees by failing to object at the sentencing hearing. (*Aguilar, supra*, 60 Cal.4th at p. 864.)

Aguilar is on point. In that case, the trial court imposed section 987.8 attorney fees at the sentencing hearing without objection. (*Aguilar, supra*, 60 Cal.4th at p. 865.) The sentencing “court noted: ‘Many of these fees are going to be based on his ability to pay. When he contacts the probation office, he’ll fill out fiscal financial assessment form [sic] and he can talk with the probation deputy about his ability to pay these various fees.’” (*Ibid.*) The California Supreme Court concluded the “appellate forfeiture rule” barred the defendant’s challenge to the imposition of the attorney fees. (*Id.* at p. 867.) It concluded it was “especially appropriate” to apply the forfeiture rule because the “defendant had two opportunities to object to the fees the court imposed, and availed himself of neither[:.]” (1) he failed to object at the sentencing hearing, where the court “announced the fees it was imposing, which largely tracked those recommended in the presentence investigation report,” and (2) he did not present “any financial justification for a fee reduction to the probation officer[.]” (*Id.* at p. 868.)

Under *Aguilar*, Coleman forfeited his challenge to the section 987.8 attorney fees by failing to object when the trial court imposed the fees at the sentencing hearing. Coleman is correct that the presentence report in this case did not contain a recommendation regarding attorney fees but that factor, by itself, does not prevent *Aguilar* from controlling here. As in *Aguilar*, nothing prevented Coleman from objecting “when the court, at sentencing, announced the fees it was imposing. . . .” (*Aguilar, supra*, 60 Cal.4th at p. 868.) And as in *Aguilar*, there is no indication Coleman “presented any financial justification for a fee reduction to the probation officer[.]” (*Ibid.*)

Aguilar declined to address “whether a challenge to an order for payment of the cost of the services of appointed counsel is forfeited when the failure to raise the challenge at sentencing may be attributable to a conflict of interest on trial counsel’s part.” (*Aguilar, supra*, 60 Cal.4th at p. 868, fn. 4.) Here, however, there is no indication of a conflict. Coleman was represented by a public defender and we have no reason to

presume trial counsel would obtain any direct benefit from the fee, which will be paid to the county. (§ 987.8, subd. (e).) We conclude the forfeiture rule bars Coleman's appellate challenge to the imposition of section 987.8 attorney fees.⁹

DISPOSITION

The judgment is affirmed.

⁹ We reject Coleman's suggestion that he was presumptively unable to pay attorney fees pursuant to section 987.8 subdivision (g)(2)(B). (*People v. Prescott* (2013) 213 Cal.App.4th 1473, 1476 [statutory presumption that prisoner cannot reimburse costs of defense did not apply to defendant sentenced to jail under the Realignment Act (§ 1170, subd. (h)(5)(B))].)

Jones, P.J.

We concur:

Simons, J.

Needham, J.

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